TAN TAK & ORS

v.

MAHABUILDERS SDN BHD

HIGH COURT MALAYA, JOHOR BAHRU
KANG HWEE GEE J
[ORIGINATING SUMMONS NO: 24-1740-2003]
1 MARCH 2006

LAND LAW: *Acquisition of land - Acquisition by corporation - Pengurusan Danaharta Nasional Berhad acquired charged land and sold it together with 305 units of 'unsold units' of apartments to defendant - Plaintiffs' claims of entitled ownership of units free of charge from defendant - Some claims based on S&Ps entered into after entire asset vested in Danaharta - Whether claims could form the basis of any 'disclosed' claim against Danaharta under s. 14 of the Pengurusan Danaharta Nasional Berhad Act 1998 - Whether Danaharta passed on the disclosed claims of the plaintiffs to the defendant under s. 19(3) of the Pengurusan Danaharta Nasional Berhad Act 1998 - Whether orders sought by plaintiffs unsustainable*

The plaintiffs purchased units of apartments in Skudaiville Condominium in 1997 to be developed by a company, Eastern Enterprise Berhad on a piece of land in Mukim Pulai, Johor. The land was charged as collateral by Eastern Enterprise to MBf Finance to finance the development. Eastern Enterprise ran into financial difficulties and had to abandon Skudaiville and soon went into liquidation. Acting under s. 13(1)(a) of the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act'), the Pengurusan Danaharta Nasional Berhad (Danaharta) acquired among others the charged land from MBf Finance. A vesting certificate dated 26 February 1999 was subsequently issued under s. 14(7) of the Act, the effect of which was to vest on Danaharta the whole of the charged land together with all the 400 uncompleted units of apartments being developed thereon as from the date of the order. Of the 400 units of uncompleted apartments, only 95 units were sold to various disclosed purchasers by Eastern Enterprise. The other 305 units had been left unsold by Eastern Enterprise at the time it went into liquidation. Acting under s. 19 of the Act, Danaharta then sold the land together with 305 unsold units to the defendant by a private treaty. The remaining 95 'sold' units were retained by Danaharta and was not sold to the defendant. The first, third, fourth, fifth, seventh, eighth, ninth, tenth, eleventh,

twelfth and fourteenth plaintiffs (hereinafter referred to as the '11 plaintiffs') were outright purchasers from Eastern Enterprise (the original developer) and had made progressive payments corresponding to the stages of construction completed in accordance with the schedule of payments in the S&P. The units they purchased came under the list of 95 units which had been declared by the seller MBf Finance to Danaharta as having sold to the purchasers. The fifteenth plaintiff ('15th plaintiff') was also an outright purchaser of a unit of the apartment but his unit was listed in the list of the 305 'unsold' units acquired by the defendant from Danaharta. The second, sixth, thirteenth, sixteenth and seventeenth plaintiffs (hereinafter referred to as the '5 plaintiffs') were not outright purchasers as the other plaintiffs but creditors who claimed to have paid for their units under the respective S&P by contra payments of debts owed them by the original developer to whom they had been suppliers of materials or contractors engaged by the developer in the construction of the condominium. The units they claimed to have purchased were nevertheless units which were not in the 305 'unsold' units purchased by the defendant from Danaharta. The defendant proceeded to enter into negotiations with the disclosed 95 purchasers with a view of entering into a new construction agreement to complete the construction of their respective unit from where the original developer had left off. It succeeded in entering into a new construction agreement with each of the purchasers except the 11 plaintiffs referred to above. The 11 plaintiffs could not agree with the defendant's proposal that it be paid for the costs of completing their units. They maintained that all that the defendant had acquired from Danaharta was only the 305 units. Their units had not been sold to the defendant. They were therefore theirs absolutely and the defendant was not free to rebuild on their units without their agreement. The issues that arose were (1) whether the claims of the 5 plaintiffs could form the basis of any 'disclosed' claim against Danaharta under s. 14 of the Act and (2) whether Danaharta passed on the disclosed claims of the plaintiffs to the defendant under s. 19(3) of the Act and (3) whether as legal owner, defendant would enjoy all rights and privileges appertaining to the ownership of the land.

Held:

(1) This court dealt with the claims of the 5 plaintiffs first. They were claims which were based on S&Ps entered into after the entire asset had vested in Danaharta. The vesting date of the asset acquired by Danaharta on the vesting certificate was 26 February 1999. All valid disclosed claims from any purchaser must therefore be claims that prevailed before this date. Having examined the respective sales and purchase agreements ('the 'S&P') relied upon by the plaintiffs, it was clear that all were entered into after 26 February 1999, after the issuance of the vesting certificate. The claims of the second, sixth, thirteenth, sixteenth and seventeenth plaintiffs were clearly *ex-post facto* and could not form the basis of any 'disclosed' claim against Danaharta under s. 14 and by extension, the defendant under s. 19 of the Act. On this ground alone, their claims must fail and be dismissed with costs. (paras 35 & 36)

(2) No evidence of Danaharta having disclosed such claims to the defendant satisfying the requirement of s. 19(3) of the Act was adduced by either party in this case. On the contrary, the evidence indicated that Danaharta did not intend to pass and had not passed the 'disclosed claims' of the purchasers to the defendant, having expressly made clear in the S&P that it entered into with the defendant that the sale of the land did not include the 95 'sold units' which included the units purchased by the plaintiffs. Therefore, the plaintiffs' disclosed claims (including the claim of the 15th plaintiff) had not passed with the land acquired by the defendant from Danaharta. The orders sought by the plaintiffs against the defendant were unsustainable and must therefore be dismissed with costs. (paras 48 & 49)

(3) As legal owner the defendant enjoyed all the rights and privileges appertaining to the ownership of the land. It was therefore free to continue to build on the uncompleted units without having to obtain the consent of any of the plaintiffs. The position remained the same after the disputed units were fully constructed. The defendant will continue to be the owner of the completed units on the legal basis that it owned the land and must therefore owned all the structures that were built on it by the common law adage: quicquid plantatur solo, solo cedit (whatever is affixed to the soil, belongs to the soil) but subject nevertheless to the equity of the plaintiffs as

alluded to earlier. The interplay between the equitable interests of the plaintiffs as against the legal right of the defendant in the completed apartments is such that each plaintiff would have an equity on the apartment he had earlier purchased from the original developer to the extent of what he had paid at the point of time when the project was abandoned. (paras 53, 54, 55 & 56)

(4) Under the circumstances, this court made a prospective order in the interest of the parties: that the plaintiffs be granted the option to purchase these units on account of their existing equity on the land. All that the plaintiff in each case needed to do to obtain legal ownership of his unit was to pay the defendant the costs incurred sans profit in rebuilding his unit. In fact, the defendant had in the course of the proceedings indicated it was agreeable to this scheme. If this option was acceptable, the parties should attend before the registrar to assess the quantum in each case. Alternatively, the defendant may purchase the equity of the plaintiff in each case by discharging the plaintiff's equity – by paying the plaintiff in each case the sum which he had paid to the original developer sans interest. The defendant shall also be at liberty to sell the units to third parties but this would have to be subject always to the equity of the plaintiffs. (para 57, 58 & 59)

[Order accordingly.]

Case(s) referred to:
Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd [2004] 1 CLJ 701 FC ***(refd)***

Legislation referred to:
Pengurusan Danaharta Nasional Berhad Act 1998, ss. 2, 13(1)(a), 14(3), (7), 16, 19(2), (3)

For the plaintiffs - Ong Kow Meng; M/s KM Ong, Lee & Co
For the defendant - Balwant Singh Sidhu (Soo Wee Loon with him); M/s Neo & Soo

JUDGMENT

Kang Hwee Gee J:

[1] The plaintiffs were the unfortunate purchasers of units of apartments in Skudaiville Condominium at that period of time when the country was in the grips of the economic downturn of 1997.

[2] The condominium was to be developed by a company called Eastern Enterprise Berhad on land known as PTD 71028 HS(D) 239702 Mukim Pulai, Johor.

[3] The land was charged as collateral by Eastern Enterprise to MBf Finance to finance the development.

[4] Eastern Enterprise ran into financial difficulties and had to abandon Skudaiville. It could not service the loan it obtained from MBf Finance which in time became non performing. Soon it went into liquidation.

[5] There was a dire need to arrest the economic deterioration by legislative process. The Pengurusan Danaharta Act 1998 was passed by Parliament. It was described in the preamble as:

> An Act to provide special laws for the acquisition, management, financing and disposition of assets and liabilities by the Corporation, the appointment of special administrators with powers to administer and manage persons whose assets or liabilities have been acquired by the Corporation and for matters connected therewith or incidental thereto.

[6] The justification for having to pass the Act was described in the subsequent preamble as follows:

> WHEREAS special provisions are required in the public interest to assist financial institutions by removing impaired assets, to assist the business sector by dealing expeditiously with financially distressed enterprises and to promote the revitalisation of the nation's economy by injecting liquidity into the financial system, such goals to be achieved through the acquisition, management, financing and disposition of assets and liabilities;
>
> AND WHEREAS legislation is the only means by which the acquisition, management, financing and disposition of assets and liabilities can be implemented promptly, efficiently and economically for the public good;
>
> AND WHEREAS legislation is the only means by which special administrators may be appointed expeditiously to administer and manage persons whose assets or liabilities have been so acquired;
>
> AND WHEREAS Pengurusan Danaharta Nasional Berhad has been established as a corporation incorporated under the Companies Act 1965 for such purposes;

Acquisition Of Skudaiville By Danaharta

[7] Acting under s. 13(1)(a) of the Act, the Pengurusan Danaharta Nasional Berhad (Danaharta) acquired among others the charged land from MBf Finance. A Vesting Certificate dated 26 February 1999 (exh. MSB28) was subsequently issued under s. 14(7) of the Act, the effect of which was to vest on Danaharta the whole of the charged land together with all the 400 uncompleted units of apartments being developed thereon as from the date of the order.

[8] Of the 400 units of uncompleted apartments, only 95 units were units which had been sold to various disclosed purchasers by Eastern Enterprise. The other 305 units had been left unsold by Eastern Enterprise at the time it went into liquidation.

Sale By Danaharta Of 305 Units Of The 'Unsold Units' Of The Apartments To The Defendant

[9] Acting under its power under s. 19 of the Act Danaharta then sold the land PTD71028 HS(D) 239702 Mukim Pulai, together with the 305 unsold units to the defendant by a private treaty.

[10] The 305 uncompleted units of apartments on the land were properly described as "unsold units" in the annexure to the sales and purchase agreement (the S&P), exhibited as MSD1, wherein a list of the apartments complete with the block, floor and unit numbers were identified.

[11] The remaining 95 'sold' units were retained by Danaharta and was not sold to the defendant.

The 11 Plaintiffs

[12] The 1st, 3rd, 4th, 5th, 7th, 8th, 9th, 10th, 11th, 12th and the 14th plaintiffs were outright purchasers from Eastern Enterprise (the original developer) and had made progressive payments corresponding to the stages of construction completed in accordance with the schedule of payments in the S&P they entered into with the original developers.

[13] The units they purchased came under the list of 95 units which had been declared by the seller MBf Finance to Danaharta as having been sold to the purchasers.

The 15th Plaintiff

[14] The 15th plaintiff was also an outright purchaser of a unit of the apartment but his unit was listed in the list of the 305 "unsold" units acquired by the defendant from Danaharta.

The 5 Plaintiffs

[15] The 2nd, 6th, 13th, 16th and 17th plaintiffs were not outright purchasers as the other plaintiffs but creditors who claimed to have paid for their units under the respective S&P by contra payments of debts owed them by the original developer to whom they had been suppliers of materials or contractors engaged by the developer in the construction of the condominium.

[16] The units they claimed to have purchased were nevertheless units which were not in the 305 'unsold units' purchased by the defendant from Danaharta.

Negotiations With The 95 Purchasers (Including The 11 Plaintiffs)

[17] The 305 unsold and uncompleted apartments were purchased with the objective of rebuilding for resale at a profit. The defendant could not however leave the 95 units (which had already been sold to various purchasers by Eastern Enterprise) untouched in their uncompleted state. They had to be rebuilt in tandem as an integrated whole with the 305 units purchased by the defendant. The defendant would not be able to complete the development of Skudaiville condominium without also completing the 95 units which it had not purchased.

[18] The defendant proceeded to enter into negotiations with the disclosed 95 purchasers with a view of entering into a new construction agreement to complete the construction of their respective unit from where the original developer had left off.

[19] It succeeded in entering into a new construction agreement with each of the purchasers except the 11 plaintiffs referred to above.

[20] The 11 plaintiffs could not agree with the defendant's proposal that it be paid for the costs of completing their units.

[21] They maintained that all that the defendant had acquired from Danaharta was only the 305 units. Their units had not been sold to the defendant. They were therefore theirs absolutely and the defendant was not free to rebuild on their units without their agreement.

[22] The defendant did not attempt to negotiate with the 15th plaintiff as it maintained that the 15th plaintiff's claim was not a 'disclosed claim' under the Act. The significance of 'disclosed claim' under the Act will be alluded to shortly in this judgment.

The Orders Sought For In This Summons

[23] The rebuilding of the condominium has now been completed. All the units have been issued with Certificate of Fitness for occupation. The plaintiffs now take a common stand that they are entitled to ownership of the units free of charge from the defendant and by this originating summons seek a long list of orders as follows (quoted verbatim):

> (a) a declaration that all the parcels that were purchased or owned by the Plaintiffs belonged absolutely to all the Plaintiffs in their capacity as registered and/or beneficial owners;
>
> (b) a declaration that the Defendant is only entitled to the 305 units of the said project which were purchased from Danaharta and still not being sold by the Company which was wound-up and that the Defendant does not have any right or interest in respect of the said parcels belonging to the Plaintiffs.
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> (c) a declaration that all the Plaintiffs were not bound by the said document on the basis that the Plaintiffs did not accept the terms and conditions as contained therein and as a result of which all the Plaintiffs do not have any obligation to pay any construction cost in respect of the said parcels;
>
> (d) an injunction *inter alia* that restrains the Defendant or his agent servant/worker or whomsoever from taking over possession or occupying the said parcels;
>
> (e) an injunction inter-alia that restrains the Defendant or his agent servant/worker or whomsoever from carrying-out, managing or executing contract work or renovation work in respect of the said parcels;

(f) an injunction *inter alia* that restrains the Defendant or his agent servant/worker or whomsoever from selling, transferring, renting to whomsoever or causing or permitting whomsoever from entering, occupying and taking over possession of the said parcels;

(g) an order that the Defendant be required to surrender vacant possession of the said parcels in its original condition to all the Plaintiffs and the Defendant inter-alia also be required to permit or facilitate all the Plaintiffs so as to use the said parcels including other common facilities in respect of the said project without any hindrance from the Defendant.

(h) an order that in the event the Defendant has sold the said parcels, then the Defendant is required to pay damages to all the Plaintiffs equivalent to the total selling price to all the Plaintiffs in respect of the said parcels;

(i) an order that the Defendant or any others purportedly occupying the said parcels be required to deliver vacant possession of the said project within 30 days from the date of this order to all the Plaintiffs and also to transfer ownership of the said parcels to the Plaintiffs;

(j) costs; and

(k) any other relief this Honourable Court deems fit and proper.

The Ground On Which The Application Was Opposed

[24] The plaintiffs' claims were resisted essentially on the ground that the plaintiffs' claims were claims on units which were purchased by the defendant and described as "unsold units" in the Schedule to the S&P entered into between the defendant and Danaharta. There were no 'disclosed claims' on these units that would encumber the defendant under s. 19 of the Act.

[25] Under s. 19(3) only claims that had been disclosed by Dahaharta to the defendant would be encumbered. The defendant, it was submitted, therefore took the land free of any right and interest of the plaintiffs.

Constitutionality Of The Pengurusan Danaharta Nasional Berhad Act 1998

[26] The Act may work injustice to the plaintiffs who insisted on their rights under the agreements that they had entered into with the original developers and who would probably stand to benefit

more had the property been left in the hands of liquidators instead of being acquired and resold by Danaharta to the defendant under the Pengurusan Danaharta Act 1998 and in consequence leaving them merely with 'disclosed claims'.

[27] But the Act has the force of law. Its constitutionality appears to have been tested and confirmed at its deepest end recently by the Federal Court in *Danaharta Urus Sdn Bhd v. Kekatong Sdn Bhd* [2004] 1 CLJ 701 wherein it was held that Danaharta was immune under s. 72 of the Act from the process of an interlocutory injunction – notwithstanding that this may have the effect of undermining the inherent power of the court to issue such a relief in cases where not to do so would cause irreversible loss to a party.

[28] As the subject of the claim of the plaintiffs involved assets which had been acquired by Danaharta and later resold by Danaharta to the defendant under the Act, it follows that the dispute encountered by the parties in this originating summons must be resolved not so much as by the law of obligations as by the provisions of the Act interposed where necessary by the common law and equity as they apply to the asset acquired by the defendant.

The Claims Of The 5 Plaintiffs

[29] It may be convenient to deal first with the claims of the 5 plaintiffs. They were claims which were based on S&Ps entered into after the entire asset had vested in Danaharta and may therefore be disposed of by merely considering the effect of the agreements against the provision of s. 14 of the Act.

[30] The power of Danaharta (the Corporation) to acquire assets and its effect on any interest attached thereto is set out in s. 14(1), (2) and (3) of the Act as follows:

> 14. Vesting.
>
> (1) The Corporation may acquire any asset, whether such asset is held by the seller alone or jointly with any other person and upon such acquisition such asset shall, on and from the vesting date, vest in the Corporation either alone or jointly with that other person, as the case may be.

(2) A vesting under subsection (1) shall have effect according to the provisions of this Part and, notwithstanding the provisions of the Civil Law Act 1956 or any other law, shall be binding on any person thereby affected in the manner provided in this Part.

(3) The Corporation shall, on and from the vesting date for an asset, acquire all of the seller's present and future rights, title and interest in and disclosed obligations with respect to such asset, free of any encumbrance or claim save for any registered interest prevailing as at the vesting date and disclosed claims.

[31] Section 2 of the Act defines "claims" to "mean any claim, defence, counterclaim, setoff, equity, action, legal proceeding or equitable interest of any kind relating to or arising out of an asset by the obligor or any third party against the seller or in respect of the asset, whether vested or contingent, present or future;"

[32] And "disclosed claim" in relation to:

(a) sections 13 to 18 means any specific claim disclosed to the Corporation in writing prior to the vesting date;

[33] Under s. 14(3) of the Act, only "disclosed claims" are encumbered with the land purchased by Danaharta.

[34] Under s. 14(7) of the Act a vesting certificate executed under the seal of the Corporation issued by Danaharta itself pursuant to s. 14(7) stating that an asset has been vested in the Corporation provides conclusive evidence of such vesting as of the vesting date.

[35] In the instant case, the vesting date of the asset acquired by Danaharta on the Vesting Certificate was 26 February 1999. All valid disclosed claims from any purchaser must therefore be claims that prevailed before this date. Having examined the respective sales and purchase agreements (the "S&P") relied upon by the plaintiffs, it is clear that all were entered into after 26 February 1999 that is to say, after the issuance of the Vesting Certificate. They were clearly entered into only after the issuance of the Vesting Certificate.

[36] The claims of the 2nd, 6th, 13th, 16th and 17th plaintiffs were clearly *ex-post facto* and could not by any stretch of imagination form the basis of any 'disclosed claim' against

Danaharta under s. 14 and by extension, the defendant under s. 19 of the Act.

[37] On this ground alone their claims must fail and be dismissed with costs.

What Exactly Did The Defendant Acquire From Danaharta?

[38] In order to decide on the claims of the remaining plaintiffs, it is first necessary to identify with precision the asset that the defendant acquired from Danaharta.

[39] It was not merely the 305 units of apartment as the plaintiffs seemed to have assumed, but also the land H.S. (D) 239702 Lot PTD 71028 on which the whole 400 units were to be built. This is clear from the S&P agreement signed by Danaharta and the Certificate of Sale signed by Danaharta.

[40] The defendant was prepared to concede that the claims of the plaintiffs were disclosed to Danaharta by the seller under s. 14 of the Act and therefore Danaharta may have acquired the land subject to the plaintiffs' disclosed claim. I would accept this concession as true and correct as the evidence clearly shows that Danaharta had retained the plaintiffs' claims by selling off only the 'unsold' units to the defendant.

The Effect Of The Acquisition

[41] Next it would be necessary to determine whether Danaharta passed on the disclosed claims of the plaintiffs to the defendant under s. 19(3) of the Act.

[42] Section 19(3) of Act read as follows:

> (3) A disposition of an asset by the Corporation to an acquiree shall have the effect of transferring the Corporation's present and future rights, title and interest in and disclosed obligations with respect to such asset, free of any encumbrance or claim save for registered interests prevailing as at the date specified in the transfer certificate as the date of disposition and disclosed claims.

[43] Under subsection (3), the asset would only be encumbered by "disclosed claims".

[44] To pass the plaintiffs' disclosed claims to the defendant Danaharta was in turn obliged to disclose the claims the defendant (the acquiree) in writing under s. 2(b) of the Act.

[45] A "disclosed claim" as it applies to an acquisition from Danaharta under s. 19 is defined under s. 2(b), as: A

> … any specific claim disclosed by the Corporation to the acquiree in writing prior to the date specified in the transfer certificate;

[46] The subsection envisaged a statutory obligation on the part of the seller (in this case Danaharta) to make a formal and specific disclosure in writing describing the nature of each of the claims of the purchasers made referable to the intended acquisition and sufficient to provide the acquiree the opportunity to appraise the value of the claims to make a commercial decision before acquiring. B C

[47] A non specific notice to the acquiree that there were purchasers of units on the land to be acquired without more, would not be sufficient to constitute a 'disclosed claim' under the Act and would not discharge that obligation. D

[48] No evidence of Danaharta having disclosed such claims to the defendant satisfying the requirement of Act was adduced by either party in this case. On the contrary the evidence indicates that Danaharta did not intend to pass and had not passed the 'disclosed claims' of the purchasers to the defendant, having expressly made clear in the S&P that it entered into with the defendant that the sale of the land did not include the 95 'sold units' which included the units purchased by the plaintiffs. E

[49] It is clear to me therefore that the plaintiffs' disclosed claims (including the claim of the 15th plaintiff) had not passed with the land acquired by the defendant from Danaharta. F

[50] The orders sought by the plaintiffs against the defendant are clearly unsustainable and must therefore be dismissed with costs. G

[51] But that is not to say that the defendant takes the land completely free from all equities – for in law the plaintiff in each case, has an equity on the land – having expended money in the uncompleted unit with the legitimate expectation of receiving in the end a completed accommodation. In monetary term that equity would be the sum that he had paid to the original developer up to the point of time when it abandoned the project. This would be quite different from having a 'disclosed claim' under s. 19 of the Act, which would in effect allow him to claim under the S&P he entered into with the original developer. H I

[52] Under s. 16 of the Act on acquiring the land Danaharta steps into the shoes of the proprietor of the land and may effect a legal transfer of the land under the National Land Code notwithstanding the existence of any caveat or prohibitory order that may have been registered prior to or after the vesting date. The defendant as an aquiree of the same land from Danaharta in turn steps into the shoes of Danaharta to acquire the right to effect a legal transfer under s. 19(2) of the Act which read as follows:

> (2) Subject to the approval of the relevant regulatory body and State Authority having jurisdiction over the disposition of an asset by the Corporation, such disposition to any acquiree shall have the effect of an acquisition of an asset by the Corporation as if that acquiree were the Corporation under section 14 and the provisions of sections 15 to 18 shall apply to that acquiree as they apply to the Corporation except that:
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> (a) a reference to the "seller" shall be construed as a reference to the Corporation;
>
> (b) a reference to the "Corporation" shall be construed as a reference to that acquiree;
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> (c) a reference to the "vesting certificate" shall be construed as a reference to the transfer certificate; and
>
> (d) a reference to the "vesting date" shall be construed as a reference to the date specified in the transfer certificate as the date of disposition.

[53] As a legitimate acquiree of the land from Danaharta the defendant therefore obtained for the time being, at common law a registrable ownership of the land pursuant to s. 19(2) read with s. 16 of the Act, and until the same is registered under the National Land Code, a registered legal proprietorship with indefeasibility.

[54] As legal owner the defendant enjoyed all the rights and privileges appertaining to the ownership of the land. It was therefore free to continue to build on the uncompleted units without having to obtain the consent of any of the plaintiffs.

[55] The position remained the same after the disputed units were fully constructed. The defendant will continue to be the owner of the completed units on the legal basis that it owned the

land and must therefore owned all the structures that were built on it by the common law adage: quicquid plantatur solo, solo cedit (whatever is affixed to the soil, belongs to the soil) but subject nevertheless to the equity of the plaintiffs as alluded to earlier.

[56] The interplay between the equitable interests of the plaintiffs as against the legal right of the defendant in the completed apartments is such that each plaintiff would have an equity on the apartment he had earlier purchased from the original developer to the extent of what he had paid at the point of time when the project was abandoned.

The Need For A Prospective Order

[57] The dismissal of the plaintiffs' application would almost certainly leave the dispute between the parties unresolved and their status in limbo. It would therefore be necessary under the circumstances to make what I would call a prospective order in the interest of the parties: that the plaintiffs be granted the option to purchase these units on account of their existing equity on the land. All that the plaintiff in each case needs to do to obtain legal ownership of his unit is to pay the defendant the costs incurred sans profit in rebuilding his unit. In fact the defendant had in the course of the proceedings indicated it was agreeable to this scheme. If this option is acceptable the parties should attend before the registrar to assess the quantum in each case.

[58] Alternatively, the defendant may purchase the equity of the plaintiff in each case by discharging the plaintiff's equity – by paying the plaintiff in each case the sum which he had paid to the original developer sans interest. The defendant shall also be at liberty to sell the units to third parties but this would have to be subject always to the equity of the plaintiffs.

[59] I should perhaps add a rider that all is not lost for the 12 plaintiffs whose claims I have dismissed. They may still have recourse to Danaharta in whose hands their disclosed claim reside.